

CLAUSE I-119 – SERVICE CONTRACT ACT (AS AMENDED MAY 1989) (August 2002)

- A. This subcontract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).
- B. As used in these clauses, the term "service employee" means any person engaged in the performance of this subcontract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29 Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any subcontractual relationship that may be alleged to exist between a Subcontractor or lower-tier subcontractor and such persons.
- C. COMPENSATION –
 - 1. Each service employee employed in the performance of this subcontract by the Subcontractor or any lower-tier subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this subcontract.
 - 2.
 - a. If there is such a wage determination attached to this subcontract, the Subcontracting Officer shall require that any class of service employee which is not listed therein and which is to be employed under the subcontract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the Subcontractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150).
 - b. Such conforming procedure shall be initiated by the Subcontractor prior to the performance of subcontract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Subcontractor to the Subcontracting Officer no later than thirty days after such unlisted class of employees performs any subcontract work. The Subcontracting Officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the Subcontractor and the employees, to the Wage and Hour Division, Employment Standards Administration, and U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within thirty days of receipt or will notify the Subcontracting Officer within thirty days of receipt that additional time is necessary.
 - c. The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Subcontracting Officer who shall promptly notify the Subcontractor of the action taken. Each affected employee shall be furnished by the Subcontractor with a written copy of such determination or it shall be posted as a part of the wage determination.
 - d.
 - (1) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices that rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
 - (2) In the case of subcontract modification, an exercise of an option or extension of an existing subcontract, or in any other case where a subcontractor succeeds a subcontract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the subcontract which are listed in the current wage determination, and those specified for

corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of subcontract work by the unlisted class of employees, the Subcontractor shall advise the Subcontracting Officer of the action taken but the other procedures in paragraph B.2.a. of this section need not be followed.

- (3) No employee engaged in performing work on this subcontract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
 - e. The wage rate and fringe benefits finally determined pursuant to paragraphs (B)(2)(a) and (b) of this section shall be paid to all employees performing in the classification from the first day on which subcontract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced subcontract work shall be a violation of the Act and this subcontract.
 - f. Upon discovery of failure to comply with paragraphs (B)(2)(a) through (e) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced subcontract work.
3. If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this subcontract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after one (1) year and not less often than once every two (2) years, pursuant to wage determinations to be issued by the Wage and Hour Division.

D. OBLIGATION TO FURNISH FRINGE BENEFITS –

The Subcontractor or lower-tier subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D or 29 CFR Part 4, and not otherwise.

E. MINIMUM WAGE –

1. In the absence of a minimum wage attachment for this subcontract, neither the Subcontractor nor any lower-tier subcontractor under this subcontract shall pay any person performing work under the subcontract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the Subcontractor or any lower-tier subcontractor of any other obligation under law or lower-tier subcontract for payment of a higher wage to any employee.

F. SUCCESSOR SUBCONTRACTS –

If this subcontract succeeds a subcontract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this subcontract setting forth such collectively bargained wage rates and fringe benefits, neither the Subcontractor nor any lower-tier subcontractor under this subcontract shall pay any service employee performing any of the subcontract work (regardless of whether or not such employee was employed under the predecessor subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No subcontractor or lower-tier subcontractor under this subcontract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 with the review procedures provided in 29 CFR 4.10/and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor subcontractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the subcontract or lower-tier subcontract, in accordance with the decision of the

Administrator, the Administrative law Judge, or the Board of Service Contract Appeals, as the case may be irrespective of whether such issuance occurs prior to or after the award of a subcontract or lower-tier subcontract, 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

G. NOTIFICATION TO EMPLOYEES –

The Subcontractor and any lower-tier subcontractor under this subcontract shall notify each service employee commencing work on this subcontract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this subcontract, or shall post the wage determination attached to this subcontract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section (2a)(4) of the Act and of this subcontract.

H. SAFE AND SANITARY WORKING CONDITIONS –

The Subcontractor or lower-tier subcontractor shall not permit any part of the services called for by this subcontract to be performed in building or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor or lower-tier subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Subcontractor or lower-tier subcontractor shall comply with the safety and health standards applied under 29 CFR 1925.

I. RECORDS –

1. The Subcontractor and each lower-tier subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work records containing the information specified in paragraphs G.1.a. through f. of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.
 - a. Name and address and social security number of each employee.
 - b. The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.
 - c. The number of daily and weekly hours so worked by each employee.
 - d. Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - e. A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this subcontract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph b. of this section. A copy of the report required by the clause in paragraph 2.a. of this section shall be deemed to be such a list.
 - f. Any list of the predecessor subcontractor's employees that had been furnished to the Subcontractor pursuant to paragraph N. below.
2. The Subcontractor shall also make available a copy of this subcontract inspection or transcription by authorized representatives of the Wage and Hour Division.
3. Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this subcontract, and in the case of failure to produce such records, the Subcontracting Officer, upon direction of the Department of Labor and notification of the Subcontractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.
4. The Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

J. PAY PERIODS –

The Subcontractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulation, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than Bi-monthly

K. WITHHOLDING OF PAYMENTS AND TERMINATION OF SUBCONTRACT –

The Subcontracting Officer shall withhold or cause to be withheld from the SURA prime subcontractor under this or any other SURA subcontract with the prime subcontractor such sums as an appropriate official of the Department of Labor requests or such sums as the Subcontracting Officer decides may be necessary to pay underpaid employees employed by the Subcontractor or lower-tier subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the Subcontractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the subcontract work. In such event, SURA may enter into other subcontracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.

L. LOWER-TIER SUBCONTRACTS –

The subcontractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965, in all subcontracts subject to the Act. The term "subcontractor" as used in these clauses in any subcontract, shall be deemed to refer to the Subcontractor, except in the term "SURA prime subcontractor."

M. COLLECTIVE BARGAINING AGREEMENTS APPLICABLE TO SERVICE EMPLOYEES –

1. If wages to be paid or fringe benefits to be furnished any service employees employed by the SURA prime subcontractor or any lower-tier subcontractor under the lower-tier subcontract are provided for in a collective bargaining agreement which is or will be effective during any period in which the subcontract is being performed, the SURA prime subcontractor shall report such fact to the Subcontracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the subcontract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the subcontract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of subcontract performance, such agreements shall be reported promptly after negotiation thereof.

N. SENIORITY LIST –

Not less than ten (10) days prior to completion of any subcontract being performed at a Federal facility where service employees may be retained in the performance of the succeeding subcontract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a subcontractor (predecessor) or successor (4.173 of Regulations, 29 CFR Part 4), the incumbent prime subcontractor shall furnish to the Subcontracting Officer a certified list of the names of all service employees on the Subcontractor's or lower-tier subcontractor's payroll during the last month of subcontract performance. Such list shall also contain anniversary dates of employment on the subcontract either with the current or predecessor subcontractors of each such service employee. The Subcontracting Officer shall turn over such list to the successor subcontractor at the commencement of the succeeding subcontract.

O. RULINGS AND INTERPRETATIONS –

Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

P. LOWER-TIER SUBCONTRACTOR'S CERTIFICATION –

1. By entering into this subcontract, the Subcontractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government subcontracts by virtue of the sanctions imposed pursuant to section 5 of the Act.
2. No part of this subcontract shall be subcontracted to any person or firm ineligible for award of a Government subcontract pursuant to section 5 of the Act.
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Q. VARIATIONS, TOLERANCES, AND EXEMPTIONS INVOLVING EMPLOYMENT –

Notwithstanding any of the clauses in paragraphs B. through M. of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by public Law

92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

1. Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by Section 2(a)(1) or 2(b)(1) of the Service Contract Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
2. The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
3. The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

R. APPRENTICES –

Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the subcontract work in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to his entire work force under the registered program.

S. TIPS –

An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(M) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, that the amount of such credit may not exceed \$1.34 per hour beginning January 1, 1981. To utilize this provision:

1. The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
2. The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
3. The employer must be able to show by records that the employee received at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;
4. The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue 4(c) of the Act.

T. DISPUTES CONCERNING LABOR STANDARDS –

Disputes arising out of the labor standards provisions of this subcontract shall not be subject to the general disputes clause of this subcontract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its lower-tier subcontractors) and the subcontracting agency, the U.S. Department of Labor, or the employees or their representatives.